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NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES OF DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CONTINENTAL D.I.A. DIAMOND  
PRODUCTS, INC. , a California corporation,

Plaintiff,

vs.

DONG YOUNG DIAMOND INDUSTRIAL  
CO., LTD., a South Korean company,  
DONGSOO LEE, an individual, and DOES 1-  
10, inclusive,

Defendants.

CV 08

Case No.

2136

COMPLAINT FOR BREACH OF  
CONTRACT, TRADEMARK  
INFRINGEMENT, FALSE ADVERTISING  
AND DESIGNATION OF ORIGIN, AND  
UNFAIR COMPETITION

JURY TRIAL DEMANDED

**THE PARTIES**

1. Plaintiff Continental D.I.A. Diamond Products, Inc. ("Plaintiff" or "Continental") is a California corporation having its principal place of business in San Carlos, California. Continental designs, manufactures, sells and markets professional quality diamond-containing saw and cutting blades, grinding wheels, polishing wheels, resin polishing pads, core drills, milling bits, and profile tooling and other tools for working stone, marble, granite and concrete ("Products"). Continental's Products are sold in the United States and abroad through distributors and wholesalers, which in turn, sell Products to contractors, specialty fabricators and retail supply stores.

2. Plaintiff is informed and believes, and based thereon alleges, that Dong Young Diamond Industrial Co., Ltd. ("Dong Young") is a South Korean company having its

1 principal place of business in Incheon, South Korea. Plaintiff is further informed and believes,  
2 and based thereon alleges, that Dong Young holds itself out to the public as a global provider of  
3 diamond-containing bits and blades for power tools for the stone, marble, granite and concrete -  
4 working trade.

5 3. Plaintiff is informed and believes, and based thereon alleges, that Mr.  
6 DongSoo Lee ("Lee") is a citizen of South Korea and the president and owner of Dong Young,  
7 who at all relevant times alleged herein, held himself out as acting and speaking on behalf of  
8 Dong Young.

9 4. The true names and capacities, whether individual, corporate, associate or  
10 otherwise, of defendants DOES 1 through 10, inclusive, are unknown to Plaintiff who therefore  
11 sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon  
12 alleges that DOES 1 through 10, inclusive, and each of them, are legally responsible in some  
13 manner for the events and happenings referred to herein, and proximately caused or contributed  
14 to the injuries and damages to Plaintiff as herein alleged. When Plaintiff ascertains the true  
15 names and capacities of Does 1 through 10, it will ask leave of this Court to amend its  
16 complaint by setting forth the same. Plaintiff shall hereinafter collectively refer to defendants  
17 Dong Young, Lee, and Does 1 through 10 as "Defendants".

18 5. Plaintiff is informed and believes and thereon alleges that Continental and  
19 Dong Young are direct competitors who sell diamond-containing bits and blades for power  
20 tools for the stone, marble, granite and concrete-working trade to distributors and wholesalers.

#### 21 22 **JURISDICTION AND VENUE**

23 6. Plaintiff files this action against Defendants pursuant to the Lanham Act, 15  
24 U.S.C. § 1051 et seq., and in particular, for trademark infringement in violation of 15 U.S.C. §  
25 1114; false designations of origin, false advertising, and trademark infringement and unfair  
26 competition, all in violation of 15 U.S.C. § 1125(a); for violations of California's Unfair  
27 Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.; for violation of California's common  
28 law for unfair competition; and for breach of contract under California law.

1           7.           This Court has subject matter jurisdiction over Plaintiff's federal claims  
2 stated herein under 15 U.S.C. §§ 1121, 1125(a) and 28 U.S.C. §§ 1331, 1338.

3           8.           This Court has subject matter jurisdiction over Plaintiff's California state law  
4 claims stated herein, each of which arise out of a common nucleus of operative facts with those  
5 from which the federal claims arise, under the principles of ancillary and pendant jurisdiction  
6 pursuant to 28 U.S.C. § 1367(b) and 28 U.S.C. § 1338(b).

7           9.           The Court also has subject matter jurisdiction over Plaintiff's California state  
8 law claims stated herein under 28 U.S.C. § 1332, in that it is a civil action between citizens of  
9 different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of  
10 interest and costs.

11          10.          Plaintiff is informed and believes, and based thereon alleges that the Court  
12 has personal jurisdiction over Defendants because, inter alia, they:

13                   (a)       conduct, engage and carry on continuous and substantial business within  
14 this judicial district, California and throughout the United States;

15                   (b)       within this judicial district, California and throughout the United States  
16 have committed the wrongful acts alleged below, in business interactions purposefully elicited  
17 by Defendants with or directed to residents of California and other states in the United States,  
18 as well as used the Internet and email communications to advertise, promote and solicit, within  
19 said district and states, all of which harms Plaintiff within said district and states; and

20                   (c)       that a substantial part of the events and omissions, which give rise to this  
21 action, including the place where at least part of the contract was to be performed and where the  
22 breaches occurred took place in this district and California; and

23                   (d)       the License Agreement between the parties at issue herein states that it is  
24 to be construed according to the laws of the State of California.

25          11.          Venue is proper in the United States District Court for the Northern District  
26 of California pursuant to under 28 U.S.C. § 1391(a)(2) and (b)(2) for the same reasons personal  
27 jurisdiction exists over Defendants in this judicial district.

28       ///

**GENERAL ALLEGATIONS**

**Plaintiff's Trade Name, Logo and Marks**

12. Beginning in or about 1993, and continuing through the present, Plaintiff has been doing business in the United States and abroad. On April 14, 1997, Plaintiff incorporated its business in California under the Continental D.I.A. Diamond Products, Inc., and began using it as the trade name for the Products it designs, manufactures and sells. Plaintiff has acquired trademark rights to the trademark and trade name and Logo comprising "Continental D.I.A. Diamond Products, Inc." ("Trade Name" or "Continental Logo") at common law from and after said date. A true and correct copy of the Continental Logo is attached hereto as Exhibit A.

13. Beginning in December 1997, Plaintiff began using "TERMINATOR®" as the trade name for the Products it designed, manufactures and sells. Plaintiff has acquired trademark rights to the mark TERMINATOR®, both at common law from and after said date and further by virtue of registrations with the United States Patent and Trademark Office, including, inter alia, a federal Trademark Registration for "TERMINATOR", No. 2,497,482, registered October 16, 2001; "TERMINATOR XTREME", No. 3,028,708, registered December 13 2005; "TERMINATOR G5", No. 3,083,811 registered April 18, 2006; and a pending application for "TERMINATOR ZOOM", Serial Number 77/241,273, filed July 27, 2007 (hereinafter collectively referred to as "the TERMINATOR® marks"). True and correct copies of these registration certificates and the application are attached hereto as Exhibits B-E.

14. Beginning in May 1999, Plaintiff began using distinctive flame patterns ("Terminator Logos") as a trademark for certain of the TERMINATOR®-branded saw blade Products. True and correct copies of the Terminator Logos are attached as Exhibits F-H. Plaintiff's Continental Logo and Trade Name, Terminator Logos and the TERMINATOR® marks are hereinafter collectively referred to as the "Continental and Terminator Marks."

15. At various times since beginning operations, Plaintiff has added to its product line numerous types of diamond-containing stone-cutting products.

16. Plaintiff has regularly identified and continues to regularly identify its Products by the Continental and Terminator Marks.

1           17.           Plaintiff has widely sold its products identified by the Continental and  
2 Terminator Marks in California and in interstate commerce. Plaintiff has invested significant  
3 time, energy, and financial resources in extensively advertising, promoting, and developing the  
4 Continental and Terminator Marks in California, throughout the United States and abroad. As a  
5 result, Plaintiff has established considerable goodwill in the Continental and Terminator Marks  
6 and they have become widely known and recognized in California, throughout the United States  
7 and abroad as a symbol of high quality and performance diamond-containing stone-cutting  
8 products.

9           18.           Beginning at a date many years prior to Defendants' activities complained of  
10 herein, the Continental and Terminator Marks have acquired a secondary meaning with the  
11 public as indicating a single source of high quality and performance diamond-containing stone-  
12 cutting Products and indicating Plaintiff as such source. The Continental and Terminator Marks  
13 are invaluable assets of substantial and inestimable worth to Plaintiff. For example,  
14 TERMINATOR® blade was also specified by and received a "Park Approved" rating by Park  
15 Industries, Inc. an Original Equipment Manufacturer located in St. Cloud, MN. The "Park  
16 Approved" designation confirms that the blade has been thoroughly tested by Park Industries'  
17 engineers against other blades on the market, and has been selected as the preferred blade to use  
18 with Park Industries Stone-working machinery. Park Industries exhibits its stone-working  
19 machinery in actual operation at various trade shows throughout the year while using the  
20 TERMINATOR® blade to cut stone slabs.

21           19.           Plaintiff is the owner of the United States registrations for the  
22 TERMINATOR® marks attached hereto as Exhibits B-D, and of the goodwill of the business  
23 of designing, producing and marketing diamond-containing stone-cutting Products, connected  
24 with the use of, and symbolized by, the TERMINATOR® marks. The registrations were duly  
25 and lawfully issued, and are currently in full force and effect.

26           20.           Plaintiff has complied with all of the requirements of 15 U.S.C. § 1065 with  
27 respect to the registration of TERMINATOR® No. 2,497,482 attached as Exhibit B.  
28 Accordingly, Plaintiff's right to use such registered mark in commerce has become

1 incontestable as provided in 15 U.S.C. § 1065. Under 15 U.S.C. § 1115(b), the registration is  
2 conclusive evidence of Plaintiff's exclusive right to use the registered mark in commerce or in  
3 connection with the products in the registration which plaintiff has specified pursuant to 15  
4 U.S.C. § 1065.

5 21. Plaintiff has complied with all of the requirements of 15 U.S.C. § 1051 with  
6 respect to the registration of TERMINATOR XTREME® and TERMINATOR G5® attached  
7 as Exhibits C-D. Accordingly, under 15 U.S.C. § 1057(b), the registrations are conclusive  
8 evidence of Plaintiff's exclusive right to use the registered marks in commerce or in connection  
9 with the products in the registrations which Plaintiff has specified pursuant to 15 U.S.C. § 1051.

10 22. Plaintiff has complied with all of the requirements of federal common law  
11 with respect to the establishing rights based upon continuous use in interstate commerce of the  
12 following trade names and marks: Continental D.I.A. Diamond Products, Inc.; the Continental  
13 D.I.A. Diamond Products, Inc. Logo; the TERMINATOR® marks and the Terminator Logos,  
14 which are attached hereto, respectively, as Exhibits A-H. Such continuous use of these trade  
15 names and marks on Continental's Products is evidence of Plaintiff's right to use the marks in  
16 commerce or in connection with the products which Plaintiff has specified.

17  
18 **Plaintiff's Products And The Manufacturing Thereof**

19 23. Plaintiff has developed certain confidential proprietary information relating  
20 to the pricing, profit margins, design, modification, composition, specifications and methods of  
21 manufacture and marking of certain Continental Products (collectively referred to as  
22 "Proprietary Information").

23 24. On April 9, 2004, Continental and Dong Young entered into a manufacturing  
24 and license agreement ("License Agreement") under which Continental granted Dong Young a  
25 limited license to use Proprietary Information necessary to manufacture certain diamond-  
26 containing stone-cutting products for Plaintiff; and to apply certain Continental and Terminator  
27 Marks to such products. A true and correct copy of the License Agreement (excluding Exhibit  
28 A thereto for confidentiality purposes, which contains certain Proprietary Information,) is



1 attached hereto as Exhibit I.

2           25.           The License Agreement restricted Dong Young's use of Continental's  
3 Proprietary Information and the Continental and Terminator Marks to only the extent necessary  
4 to manufacture and produce diamond-containing stone-cutting products exclusively for  
5 Continental. Further, the License Agreement restricted the sale of any such products only to  
6 Continental.

7           26.           The License Agreement contained express provisions concerning the  
8 treatment of Continental's Proprietary Information. Specifically, Section II.(1) provides that:

9                   CONTINENTAL D.I.A shall make available to DONG YOUNG... certain  
10                   Proprietary Information relating to the design, modification, composition,  
11                   specifications and methods of manufacture and marking of the Licensed  
12                   Products. DONG YOUNG agrees to maintain such Proprietary Information  
13                   in confidence, and to use it only for manufacture of Products to be made for  
14                   CONTINENTAL D.I.A. and for no other purpose. DONG YOUNG  
15                   understands and agrees that Proprietary Information received from or  
16                   developed by CONTINENTAL D.I.A may not be divulged to third parties or  
17                   used to manufacture products for third parties.

18 Similarly, Section VI. (4) of the License Agreement states:

19                   If the Agreement expires or is terminated, all rights granted to Dong Young  
20                   herein shall cease. Dong Young understands and agrees to be bound not to  
21                   divulge to third parties or manufacture products for third parties with  
22                   Proprietary Information received from CONTINENTAL D.I.A.

23           27.           The License Agreement also contained an express provision concerning the  
24 limitations of Dong Young's application and use of the Continental and Terminator Marks.  
25 Specifically, Section III.(2) states: "The 'TERMINATOR' trademark and other Licensed Marks  
26 may be applied by Dong Young only to Licensed Products that are manufactured in accordance  
27 with this Agreement and shipped to CONTINENTAL D.I.A."

28           28.           Consistent with the terms of the License Agreement, Dong Young used  
Continental's Proprietary Information to manufacture diamond-containing stone-cutting  
products exclusively for Continental and shipped such products bearing the Continental and  
Terminator Marks to Continental. As provided by Section III. of the License Agreement, Don  
Young's manufacturing of such products was done under strict quality requirements dictated  
and monitored by Continental.

**Defendants' Breach And Infringement**

29. Plaintiff is informed and believes, and based thereon alleges that beginning on or about March 7, 2007, Lee began sending emails to Continental's existing and prospective customers in this District and throughout California and the United States wherein Lee: (a) revealed that Dong Young supplied certain diamond-containing stone-cutting products to Plaintiff; (b) enclosed images of diamond-containing stone-cutting products that appeared to be the products and/or unauthorized copies, imitations or replicas thereof that Dong Young manufactured for Continental under the terms of the License Agreement; and (c) offered to sell such products directly to those customers at a lower price than the purported identical Continental Products.

30. Plaintiff is further informed and believes, and based thereon alleges that some, if not all of the diamond-containing stone-cutting products pictured in Lee's emails had certain Continental and Terminator Marks affixed thereto, and most, if not all, of such pictured products were the same or nearly identical in shape, size, design, color and appearance to Continental's Products.

31. Plaintiff is also informed and believes, and based thereon alleges that to entice Continental's existing and prospective customers to purchase diamond-containing stone-cutting products directly from Dong Young rather than Continental, Lee offered to send these customers samples of any of the products for testing. Plaintiff is further informed and believes, and based thereon alleges that Lee, with the full knowledge that his and Dong Young's activities were in breach of the License Agreement and to prevent Continental from discovering such breaches, Lee asked that these customers keep the inquiries made by Lee and Dong Young from Continental.

32. Plaintiff is informed and believes, and based thereon alleges that on or about May 4, 2007, Lee of Dong Young began sending emails to Continental's existing and prospective customers in this District and throughout California and the United States wherein Lee enclosed images of products that appeared to be the same diamond-containing stone-cutting products that Dong Young agreed to manufacture for Continental under the License Agreement.



1 Plaintiff is further informed and believes, and based thereon alleges that some, if not all, of such  
2 pictured products appeared to be the same or nearly identical in shape, size, design, color and  
3 appearance to Continental Products, but noticeably lacked any Continental and Terminator  
4 Marks.

5 33. Plaintiff is informed and believes, and based thereon alleges that Defendants'  
6 products used these solicitations as "bait" to generate interest and entice a response from  
7 Continental's existing and prospective customers so Lee could then disclose that Dong Young  
8 manufactures diamond-containing stone-cutting products for Continental and offer to sell the  
9 same or nearly identical products directly to Continental's customers at a lower price than  
10 Continental Products.

11 34. Plaintiff is informed and believes, and based thereon alleges that Defendants  
12 improperly disclosed some of Continental's Proprietary Information during the aforementioned  
13 solicitations.

14 35. On or about September 28, 2007, Vincent Salemi, president of Continental,  
15 met to with Lee in Continental's offices, located in San Carlos, California. In that meeting, Mr.  
16 Salemi confronted Lee regarding his and Dong Young's improper and wrongful conduct. Lee  
17 admitted that he had wrongfully solicited Continental's customers and then apologized and  
18 claimed he would not repeat same "mistake" again. Mr. Salemi ended the meeting by  
19 informing Lee that Continental would no longer do business with either Lee or Dong Young.

20 36. In or about November 2007, Lee met with Mr. Salemi again in Continental's  
21 San Carlos, California offices. During that meeting, Lee acknowledged the termination of the  
22 License Agreement and asked whether Continental would resume doing business with Dong  
23 Young. Mr. Salemi rejected Lee's request.

24 37. Plaintiff is informed and believes, and based thereon alleges that Defendants  
25 continue to improperly solicit Plaintiff's customers via email, facsimile, telephone, in-person  
26 pitches and at trade shows by stating that Dong Young is manufacturing certain diamond-  
27 containing stone-cutting products for Plaintiff and offering for sale those products or purported  
28 equivalents thereof to Plaintiff's customers in the manner described above.

1           38.           Plaintiff is informed and believes, and based thereon alleges that Defendants  
2 have improperly used and continue to improperly use Continental's Proprietary Information in  
3 violation of the terms of the License Agreement.

4           39.           Plaintiff is informed and believes, and based thereon alleges that Defendants  
5 have engaged and continue to engage in a pattern and practice of making false and misleading  
6 statements to customers by offering to sell them products that are of the same specifications as  
7 CONTINENTAL D.I.A. trademark, trade name and TERMINATOR® -branded Products, but  
8 do not allegedly use Continental's Proprietary Information. Plaintiff is further informed and  
9 believes, and based thereon alleges that such statements were made with Defendants' full  
10 knowledge that such products were manufactured by using Plaintiff's Proprietary Information  
11 and were simply un-branded Continental Products.

12           40.           Plaintiff is informed and believes, and based thereon alleges that Defendants  
13 have engaged and continue to engage in a pattern and practice of making false and misleading  
14 statements to customers by offering to sell them products that are of the same specifications as  
15 CONTINENTAL D.I.A. trademark, trade name and TERMINATOR® -branded Products  
16 because they are manufactured using Plaintiff's Proprietary Information, which Dong Young  
17 allegedly had the right to use and/or allegedly owns such Proprietary Information.

18           41.           Plaintiff is informed and believes that Defendants' use of the Continental and  
19 Terminator Marks in its offers for sale, marketing materials, business documents, business  
20 meetings and otherwise in the stream of commerce within California and throughout the United  
21 States has and is likely to cause confusion and mistake with Plaintiff's use of its Continental and  
22 Terminator Marks among the consumers and members of the public generally.

23           42.           Plaintiff is informed and believes that Defendants' use of the Continental and  
24 Terminator Marks is calculated to trade off the goodwill and reputation of the Continental and  
25 Terminator Marks by passing-off Defendants' products.

26           43.           Defendants' passing-off products that are identical to Plaintiff's  
27 CONTINENTAL D.I.A. trademark, trade name and TERMINATOR® -branded Products in  
28 this manner tarnishes the goodwill and reputation of Plaintiff and the Continental and

1 Terminator Marks.

2 44. Plaintiff is informed and believes, and based thereon alleges that the  
3 aforementioned conduct has caused confusion, deception and mistake among the consuming  
4 public and trade by creating the erroneous impression that the goods sold, offered for sale,  
5 distributed or advertised by Defendants have been manufactured, approved, authorized,  
6 sponsored, endorsed, and/or guaranteed by Plaintiff.

7 45. Plaintiff is informed and believes, and based thereon alleges that as a result  
8 of Defendants' aforementioned misconduct, Continental's actual and prospective customers  
9 have purchased and will continue to purchase diamond-containing stone-cutting products from  
10 Defendants instead of from Continental.

11  
12 **COUNT I**

13 **(Breach Of Written Agreement Against Dong Young)**

14 46. Plaintiff realleges and incorporates by reference the preceding allegations  
15 contained above in paragraphs 1 through the immediately preceding paragraph as though fully  
16 set forth herein.

17 47. Dong Young has materially breached the License Agreement by using  
18 Continental's Proprietary Information to manufacture and produce diamond-containing stone-  
19 cutting products for customers other than Continental.

20 48. Dong Young has materially breached the License Agreement by offering to  
21 sell, diamond-containing stone-cutting products, which Dong Young manufactured using  
22 Continental's Proprietary Information to customers other than Continental.

23 49. Plaintiff is informed and believes, and based thereon alleges that Dong  
24 Young has also materially breached the License Agreement by selling diamond-containing  
25 stone-cutting products, which Dong Young manufactured using Continental's Proprietary  
26 Information to customers other than Continental.

27 50. Dong Young has materially breached the License Agreement by improperly  
28 using Continental and Terminator Marks by offering to sell diamond-containing stone-cutting

1 products to parties other than Continental, including Continental's current and prospective  
2 customers.

3 51. Plaintiff is informed and believes, and based thereon alleges that Dong  
4 Young has further materially breached the License Agreement by selling diamond-containing  
5 stone-cutting products bearing Continental and Terminator Marks to parties other than  
6 Continental.

7 52. Plaintiff is informed and believes, and based thereon alleges that Dong  
8 Young has further materially breached the License Agreement by failing to maintain the  
9 confidentiality of Continental's Proprietary Information.

10 53. Plaintiff has performed all conditions, covenants, and promises required on  
11 its part to be performed in accordance with the terms of the License Agreement, except those  
12 conditions, covenants, and promises, the performance of which were excused as a result of  
13 Dong Young's material breaches of the License Agreement.

14 54. As a direct and proximate result of Dong Young's breaches of its contractual  
15 duties, Plaintiff suffered damages, including but not limited to, lost sales of diamond-containing  
16 stone-cutting products and lost profits from the delay resulting from the diversion of  
17 Continental's diamond-containing stone-cutting products manufactured by Dong Young to third  
18 parties and the need to locate another manufacturer after learning of Dong Young's breaches  
19 and wrongful conduct. Plaintiff has been damaged in an amount according to proof at trial, but  
20 in no event less than the approximate amount of \$1.3 million, plus interest.

21 55. The above described breaches of the confidentiality and exclusivity  
22 provisions by Dong Young has also caused and are continuing to cause irreparable injury to  
23 Plaintiff, for which Plaintiff has no adequate remedy at law, and Dong Young will continue to  
24 do so unless ordered by this Court to specifically perform and comply with these provisions.

25 56. The above described breaches by Dong Young have also caused and are  
26 continuing to cause irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at  
27 law, and Dong Young will continue to do so unless enjoined by this Court.

28 57. Pursuant to Cal. Civ. Code § 1717 and Section IV.(2) of the License

1 Agreement, Continental is entitled to recover its reasonable attorney's fees and costs resulting  
2 from Dong Young's aforementioned breaches. As a result of such breaches, Plaintiff has  
3 incurred attorneys' fees and costs of bringing this action. Plaintiff will continue to incur such  
4 interest, fees and costs in amounts to be proven at time of trial.

5 WHEREFORE, Plaintiff prays for relief as set forth below.

6  
7 **COUNT II**

8 **(Trademark Infringement - 15 U.S.C. § 1114 - Against All Defendants)**

9 58. Plaintiff realleges and incorporates by reference the preceding allegations  
10 contained above in paragraphs 1 through the immediately preceding paragraph as though fully  
11 set forth herein.

12 59. Defendants' aforesaid acts constitute infringement of a federal registered  
13 trademark in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

14 60. Defendants' use of the TERMINATOR®, TERMINATOR XTREME® and  
15 TERMINATOR G5® marks is likely to cause confusion, mistake and/or deception of  
16 purchasers as to the source of origin and quality of its products as being associated with  
17 Plaintiff.

18 61. Defendants' use of the TERMINATOR®, TERMINATOR XTREME® and  
19 TERMINATOR G5® marks to sell diamond-containing stone-cutting products is in breach of  
20 the License Agreement.

21 62. Purchasers are likely to purchase Defendants' products believing they are  
22 Plaintiff's products, thereby resulting in a loss of sales to the Plaintiff.

23 63. Plaintiff has no control over the nature and quality of the diamond-  
24 containing stone-cutting products manufactured and sold by Defendants, and because of the  
25 confusion as to the source engendered by Defendants, the Plaintiff's valuable goodwill with  
26 respect to its aforesaid trademark will diminish as a result of Defendants' actions.

27 64. Defendants' use of the TERMINATOR®, TERMINATOR XTREME® and  
28 TERMINATOR G5® marks to sell their diamond-containing stone-cutting products has likely

1 caused confusion and mistake and deception of the purchasers as to the source of origin and  
2 quality of its goods.

3 65. The infringement by Defendants has been willful and deliberate, designed  
4 specifically to trade upon the enormous goodwill associated with Plaintiff's TERMINATOR®,  
5 TERMINATOR XTREME® and TERMINATOR G5® marks.

6 66. The goodwill of Plaintiff's business under the TERMINATOR®,  
7 TERMINATOR XTREME® and TERMINATOR G5® marks is of enormous value, and  
8 Plaintiff will suffer irreparable harm should infringement be allowed to continue to the  
9 detriment of its trade reputation and goodwill.

10 67. As a proximate result of Defendants' above-described acts, Plaintiff has been  
11 damaged in an unascertained amount to be proven at trial.

12 68. As a proximate result of Defendants' above-described acts, Plaintiff is  
13 informed and believes and based thereon alleges that Defendants have been unjustly enriched in  
14 an unascertained amount to be proven at trial.

15 69. Plaintiff is informed and believes, and based thereon alleges that the  
16 aforementioned acts of infringement have been and will continue to be intentional, willful,  
17 deliberate, and malicious and have been committed with actual and constructive knowledge of  
18 the "TERMINATOR", "TERMINATOR XTREME" and "TERMINATOR G5" marks.  
19 Therefore, Plaintiff is entitled to recover treble damages against Defendants in an unascertained  
20 amount to be proven at trial.

21 70. The above described acts of Defendants have caused and are continuing to  
22 cause irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law, and  
23 Defendant will continue to do so unless enjoined by this Court.

24 WHEREFORE, Plaintiff prays for judgment as hereafter set forth.

25  
26 **COUNT III**

27 **(False Designation of Origin - 15 U.S.C. § 1125(a) - Against All Defendants)**

28 71. Plaintiff realleges and incorporates by reference the preceding allegations



1 contained above in paragraphs 1 through the immediately preceding paragraph as though fully  
2 set forth herein.

3 72. Defendants' aforesaid misrepresentations and acts constitute false  
4 designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

5 73. Defendants' aforesaid misrepresentations and acts were made in commerce  
6 and in competition with Plaintiff.

7 74. Defendants' aforesaid misrepresentations and acts, including the wrongful  
8 use of the Continental and Terminator Marks, constitute a false designation of origin which is  
9 likely to confuse and/or deceive and has confused and/or deceived customers and prospective  
10 customers into believing that Defendants' diamond-containing stone-cutting products are that of  
11 the Plaintiff, and, as a consequence, are likely to divert and have diverted customers away from  
12 Plaintiff.

13 75. Plaintiff has no control over the nature and quality of the diamond-  
14 containing stone-cutting products manufactured and sold by Defendants. Any failure, neglect  
15 or default by Defendant in providing quality products will reflect adversely on Plaintiff as the  
16 believed source of origin thereof, hampering efforts by Plaintiff to continue to protect its  
17 outstanding reputation for high quality and performance diamond-containing stone-cutting  
18 products, resulting in loss of sales thereof and the considerable expenditures to promote its  
19 goods under the mark, all to the detriment and irreparable harm of Plaintiff.

20 76. As a proximate result of Defendants' above-described acts, Plaintiff has been  
21 damaged in an unascertained amount to be proven at trial.

22 77. As a proximate result of Defendants' aforementioned acts, Plaintiff is  
23 informed and believes and based thereon alleges that Defendants have been unjustly enriched,  
24 and Plaintiff is therefore entitled to restitution and/or disgorgement of profits in an  
25 unascertained amount to be proven at trial.

26 78. Plaintiff is informed and believes, and based thereon alleges that Defendants'  
27 aforementioned acts have been and will continue to be intentional, willful, deliberate, and  
28 malicious and have been committed with actual and constructive knowledge of the Continental

1 and Terminator Marks. Therefore, Plaintiff is entitled to recover treble damages against  
2 Defendants in an unascertained amount to be proven at trial.

3 79. Plaintiff is informed and believes, and based thereon alleges that the  
4 aforementioned acts of Defendants has caused and are continuing to cause irreparable injury to  
5 Plaintiff, for which Plaintiff has no adequate remedy at law, and Defendants will continue to do  
6 so unless enjoined by this Court.

7 WHEREFORE, Plaintiff prays for judgment as hereafter set forth.

8  
9 **COUNT IV**

10 **(False Advertising - 15 U.S.C. § 1125(a) - Against All Defendants)**

11 80. Plaintiff realleges and incorporates by reference the preceding allegations  
12 contained above in paragraphs 1 through the immediately preceding paragraph as though fully  
13 set forth herein.

14 81. Defendants' aforesaid misrepresentations and acts constitute false  
15 advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

16 82. By reason of Defendants' acts complained of herein, Defendants have  
17 intentionally engaged in conduct that constitutes a false or misleading description of fact, and a  
18 false or misleading representation of fact tending wrongfully and falsely to describe  
19 Defendants' diamond-containing stone-cutting products.

20 83. Defendants' actions have been willful and with knowledge that these false  
21 descriptions and/or representations are likely to deceive.

22 84. As a proximate result of Defendants' above-described acts, Plaintiff has been  
23 damaged in an unascertained amount to be proven at trial.

24 85. As a proximate result of Defendants' above-described acts, Plaintiff is  
25 informed and believes and based thereon alleges that Defendants have been unjustly enriched,  
26 and Plaintiff is therefore entitled to restitution and/or disgorgement of profits in an  
27 unascertained amount to be proven at trial.

28 86. Plaintiff is informed and believes, and based thereon alleges that Defendants'

1 actions have been willful, malicious and fraudulent with knowledge of the likelihood of  
2 deception and with intent to deceive, as alleged above. Therefore, Plaintiff is entitled to recover  
3 treble damages against Defendants in an unascertained amount to be proven at trial.

4 87. Plaintiff is informed and believes, and based thereon alleges that the above  
5 described acts of Defendants have caused and are continuing to cause irreparable injury to  
6 Plaintiff, for which Plaintiff has no adequate remedy at law, and Defendants will continue to do  
7 so unless enjoined by this Court.

8 WHEREFORE, Plaintiff prays for judgment as hereafter set forth.

9  
10 **COUNT V**

11 **(Trademark Infringement and Unfair Competition - 15 U.S.C. § 1125(a) -**  
12 **Against All Defendants)**

13 88. Plaintiff realleges and incorporates by reference the preceding allegations  
14 contained above in paragraphs 1 through the immediately preceding paragraph as though fully  
15 set forth herein.

16 89. The aforesaid misrepresentations and acts constitute trademark infringement  
17 and federal unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §  
18 1125(a).

19 90. As a direct consequence of Defendants' aforesaid unlawful acts and  
20 practices, Plaintiff has suffered, and will continue to suffer, damage to its business, reputation  
21 and goodwill, for which Plaintiff is entitled to relief.

22 91. Defendants' misrepresentations concerning its diamond-containing stone-  
23 cutting products, as well as its right to use Plaintiff's Proprietary Information in the  
24 manufacturing of such products, and wrongful use of the Continental and Terminator Marks is  
25 likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection, and/or  
26 association.

27 92. As a proximate result of Defendants' above-described unlawful conduct,  
28 Plaintiff has suffered, and will continue to suffer, irreparable injury and damages in an

1 unascertained amount to its business reputation and hard-earned goodwill to be proven at trial.

2 93. As a proximate result of Defendants' above-described acts, Plaintiff is  
3 informed and believes and based thereon alleges that Defendants have been unjustly enriched in  
4 an unascertained amount to be proven at trial.

5 94. Defendants' actions have been willful, malicious and fraudulent with  
6 knowledge of the likelihood of deception and with intent to deceive, as alleged above.  
7 Therefore, Plaintiff is entitled to recover treble damages against Defendants in an unascertained  
8 amount to be proven at trial.

9 95. Plaintiff is informed and believes, and based thereon alleges that the above  
10 described acts of Defendant has caused and are continuing to cause irreparable injury to  
11 Plaintiff, for which Plaintiff has no adequate remedy at law, and Defendants will continue to do  
12 so unless enjoined by this Court.

13 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

14  
15 **COUNT VI**

16 **(Unfair Competition - Cal. Bus. & Prof. Code § 17200 et. seq. - Against All Defendants)**

17 96. Plaintiff realleges and incorporates by reference the preceding allegations  
18 contained above in paragraphs 1 through the immediately preceding paragraph as though fully  
19 set forth herein.

20 97. Defendants' aforementioned acts, including the intentional and blatant  
21 trading on the goodwill associated with Continental and Terminator Marks, false advertising  
22 and making of false statements, constitutes unfair competition, unfair and fraudulent business  
23 practices and unfair, deceptive, untrue and misleading advertising under Cal. Bus. & Prof. Code  
24 § 17200 et seq.

25 98. Defendants' aforementioned acts, including the wrongful use Continental's  
26 Proprietary Information to manufacture diamond-containing stone-cutting products for  
27 customers other than Continental and to sell such products to customers other than Continental,  
28 constitutes unfair competition and unfair business acts and practices under Cal. Bus. & Prof.

1 Code § 17200 et seq.

2 99. As a proximate result of Defendants' above-described acts, Plaintiff is  
3 informed and believes and based thereon alleges that Plaintiff has been deprived of the  
4 patronage of actual and prospective customers.

5 100. As a proximate result of Defendants' above-described conduct, Plaintiff is  
6 informed and believes and based thereon alleges that Defendant has been unjustly enriched, and  
7 Plaintiff is therefore entitled to restitution and/or disgorgement of profits in an unascertained  
8 amount to be proven at trial.

9 101. The above described acts of Defendants have caused and are continuing to  
10 cause irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law, and  
11 Defendants will continue to do so unless enjoined by this Court.

12 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.  
13

14 **COUNT VII**

15 **(Common Law Unfair Competition - Against All Defendants)**

16 102. Plaintiff realleges and incorporates by reference the preceding allegations  
17 contained above in paragraphs 1 through the immediately preceding paragraph as though fully  
18 set forth herein.

19 103. Defendants' imitation, copying and otherwise unauthorized use of the  
20 Continental and Terminator Marks, as well as passing off Plaintiff's un-branded diamond-  
21 containing stone-cutting products as their own, is likely to cause, and has caused, confusion,  
22 deception and mistake among the consuming public and trade by creating the erroneous  
23 impression that the goods sold, offered for sale, distributed or advertised by Defendant have  
24 been manufactured, approved, sponsored, endorsed or guaranteed by, or are in some way  
25 affiliated with, Plaintiff and its CONTINENTAL D.I.A. trademark, trade name and  
26 TERMINATOR® brand.

27 104. By reasons of the foregoing, Defendant has committed and is continuing to  
28 commit unfair competition under California common law.

1           105.       As a proximate result of Defendants' above-described unlawful conduct,  
2 Plaintiff is informed and believes and based thereon alleges that it has suffered, and will  
3 continue to suffer, irreparable injury and damages in an unascertained amount to its business  
4 reputation and hard-earned goodwill.

5           106.       As a proximate result of Defendants above-described conduct, Plaintiff is  
6 informed and believes and based thereon alleges that Defendant has been unjustly enriched, and  
7 Plaintiff is therefore entitled to restitution and/or disgorgement of profits in an unascertained  
8 amount to be proven at trial.

9           107.       The above described acts of Defendant has caused and are continuing to  
10 cause irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law, and  
11 Defendants will continue to do so unless enjoined by this Court.

12                   WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

13  
14                   **PRAYER FOR RELIEF**

15           WHEREFORE, Plaintiff prays for judgment in their favor and against as follows:

16           1.           An award of monetary damages, including recovery of Defendants' profits  
17 and the damages sustained by Plaintiff, arising from the acts of Defendants' complained of  
18 herein, according to proof.

19           2.           An award of trebled monetary damages, according to proof.

20           3.           A trebling of Defendants' ill-gotten profits, according to proof.

21           4.           An award of prejudgment interest from the date of each wrongful act.

22           5.           A permanent injunction enjoining Defendants, and their officers, agents,  
23 employees, servants, attorneys, representatives, successors, licensees and assigns, and each of  
24 them and all others in privity and acting on behalf of or in concert therewith,

25                   (a)       From using or displaying the Continental and Terminator Marks in  
26 connection with the manufacture, sale, bidding, offer to sell, and/or advertisement of diamond-  
27 containing stone-cutting products;

28                   (b)       From using or displaying the Continental and Terminator Marks on



1 and/or to describe diamond-containing stone-cutting Products for the purpose of enhancing the  
2 commercial value of, the selling, and/or soliciting purchases of Defendants' diamond-containing  
3 stone-cutting products, or any acronym of similar appearance, sound or import;

4 (c) From otherwise diluting the distinctive quality of and infringing  
5 Plaintiff's Continental and Terminator Marks;

6 (d) From causing likelihood of injury to Plaintiff's business reputation;

7 (e) From causing likelihood of confusion, deception, or mistake as to the  
8 source or origin of Plaintiff's products;

9 (f) From making false and misleading statements concerning the nature,  
10 specifications, characteristics, features and quality of Defendants' products, as well as its right  
11 to use Plaintiff's Proprietary Information in the manufacturing and sale of such products;

12 (g) From using and/or disclosing Plaintiff's Proprietary Information in any  
13 manner;

14 (h) Requiring Defendants to deliver up and destroy all diamond-containing  
15 stone-cutting products, white sheets, advertising materials, promotional literature, specification  
16 sheets, bidding materials, and all other materials and documents referring to, containing and/or  
17 bearing the Continental and Terminator Marks mark;

18 (i) Requiring Defendants to deliver up and destroy all documentation, hard  
19 copy and electronic files, specification sheets, molds, manufacturing tools and machines, and all  
20 other materials and documents referring to, containing and/or evidencing any of Continental's  
21 Proprietary Information;

22 (j) Requiring Defendants to deliver up and destroy all diamond-containing  
23 stone-cutting products that it manufactured using any of Continental's Proprietary Information;

24 6. An award of Plaintiff's attorney's fees and costs.

25 7. An award of restitution and/or disgorgement of profits.

26 8. Any and all further relief as may be deemed fit and proper.

27 ///

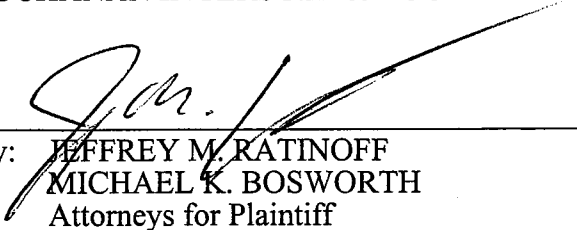
28 ///

**JURY TRIAL DEMAND**

Pursuant to Fed R. Civ. P. 5(d) and 38(b), and Local Rule 38.1, Plaintiff demands a jury trial of all issues triable by jury.

Dated: April 24, 2008

BUCHANAN INGERSOLL & ROONEY LLP

  
By: JEFFREY M. RATINOFF  
MICHAEL K. BOSWORTH  
Attorneys for Plaintiff  
CONTINENTAL D.I.A. DIAMOND  
PRODUCTS INC.

**EXHIBIT A**



**EXHIBIT B**

Int. Cl.: 7

Prior U.S. Cls.: 13, 19, 21, 23, 31, 34 and 35

Reg. No. 2,497,482

United States Patent and Trademark Office

Registered Oct. 16, 2001

**TRADEMARK  
PRINCIPAL REGISTER**

**TERMINATOR**

CONTINENTAL D.I.A. DIAMOND PRODUCTS,  
INC. (CALIFORNIA CORPORATION)  
3021 TEAGARDEN STREET  
SAN LEANDRO, CA 945775720

FOR: DIAMOND CONTAINING POWER SAW  
BLADES, BITS FOR POWER DRILLS AND POWER  
GRINDING WHEELS ALL FOR USE IN THE MAR-  
BLE, GRANITE, CONCRETE, ASPHALT, ROOFING

AND TILE INDUSTRY, IN CLASS 7 (U.S. CLS. 13, 19,  
21, 23, 31, 34 AND 35).

FIRST USE 12-0-1997; IN COMMERCE 12-0-1997.

SER. NO. 75-648,086, FILED 2-25-1999.

ANDREW BAXLEY, EXAMINING ATTORNEY



**EXHIBIT C**

Int. Cl.: 7

Prior U.S. Cls.: 13, 19, 21, 23, 31, 34 and 35

Reg. No. 3,028,708

United States Patent and Trademark Office

Registered Dec. 13, 2005

**TRADEMARK  
PRINCIPAL REGISTER**

**TERMINATOR XTREME**

CONTINENTAL D.I.A. DIAMOND PRODUCTS,  
INC. (CALIFORNIA CORPORATION)  
SUITE 18  
1300 INDUSTRIAL ROAD  
SAN CARLOS, CA 940704130

FIRST USE 9-13-2004; IN COMMERCE 9-13-2004.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,497,482.

SER. NO. 78-516,409, FILED 11-12-2004.

FOR: POWER SAW BLADES CONTAINING DIA-  
MONDS, BITS FOR POWER DRILLS CONTAINING  
DIAMONDS, POWER GRINDING WHEELS CON-  
TAINING DIAMONDS AND POLISHING PADS  
CONTAINING DIAMONDS, ALL FOR USE IN THE  
MARBLE, GRANITE, CONCRETE, ASPHALT,  
ROOFING AND TILE INDUSTRY, IN CLASS 7  
(U.S. CLS. 13, 19, 21, 23, 31, 34 AND 35).

GIANCARLO CASTRO, EXAMINING ATTORNEY

**EXHIBIT D**

Int. Cl.: 7

Prior U.S. Cls.: 13, 19, 21, 23, 31, 34, and 35

Reg. No. 3,083,811

United States Patent and Trademark Office

Registered Apr. 18, 2006

TRADEMARK  
PRINCIPAL REGISTER

TERMINATOR G5

CONTINENTAL D.I.A. DIAMOND PRODUCTS,  
INC. (CALIFORNIA CORPORATION)  
SUITE 18  
1300 INDUSTRIAL ROAD  
SAN CARLOS, CA 940704130

FIRST USE 5-4-2004; IN COMMERCE 5-4-2004.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,497,482.

SN 78-516,408, FILED 11-12-2004.

FOR: POWER SAW BLADES CONTAINING DIA-  
MONDS, BITS FOR POWER DRILLS CONTAINING  
DIAMONDS, POWER GRINDING WHEELS CON-  
TAINING DIAMONDS AND POLISHING PADS  
CONTAINING DIAMONDS, ALL FOR USE IN THE  
MARBLE, GRANITE, CONCRETE, ASPHALT,  
ROOFING AND TILE INDUSTRY, IN CLASS 7  
(U.S. CLS. 13, 19, 21, 23, 31, 34 AND 35).

GIANCARLO CASTRO, EXAMINING ATTORNEY

**EXHIBIT E**



United States Patent and Trademark Office

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# TERMINATOR ZOOM

<b>Word Mark</b>	TERMINATOR ZOOM
<b>Goods and Services</b>	IC 007. US 013 019 021 023 031 034 035. G & S: Power-operated tools and accessories for use in the marble, granite, concrete, asphalt, roofing and tile industries, namely, power saw blades containing diamonds, bits for power drills containing diamonds, power grinding wheels containing diamonds, profile wheels containing diamonds, finger bits containing diamonds and polishing pads containing diamonds
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77241273
<b>Filing Date</b>	July 27, 2007
<b>Current Filing Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	January 15, 2008
<b>Owner</b>	(APPLICANT) Continental D.I.A. Diamond Products, Inc. CORPORATION CALIFORNIA 653 Pilgrim Drive Foster City CALIFORNIA 94404
<b>Attorney of Record</b>	Michael K. Bosworth
<b>Prior Registrations</b>	2497482;3028708;3083811
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL



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**EXHIBIT F**



**TERMINATOR<sup>®</sup>**  
DIAMOND PRODUCTS

HOME

WHAT'S NEW

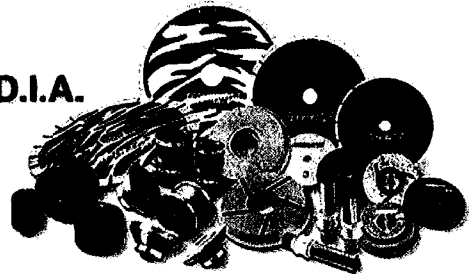
PRODUCTS

WHERE TO BUY

CONTACT US

**CONTINENTAL**  **D.I.A.**  
**DIAMOND PRODUCTS, INC.**

*...Engineering Innovation*



## CUTTING – Bridge Saw Blades

TERMINATOR SILENT CORE SANDWICH SEGMENT BRIDGE SAW BLADES

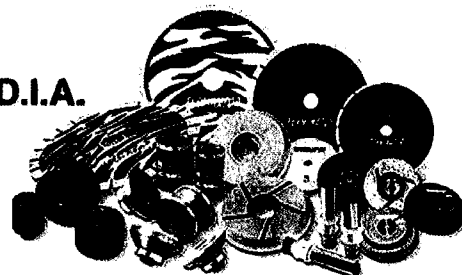


**EXHIBIT G**



**CONTINENTAL**  
DIAMOND PRODUCTS, INC. **D.I.A.**

*...Engineering Innovation*



**TERMINATOR®**  
DIAMOND PRODUCTS

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- PRODUCTS
- WHERE TO BUY
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## CUTTING - Bridge Saw Blades

TERMINATOR XTREME SILENT CORE BRIDGE SAW BLADES



EXHIBIT H



**TERMINATOR<sup>®</sup>**  
DIAMOND PRODUCTS

HOME

WHAT'S NEW

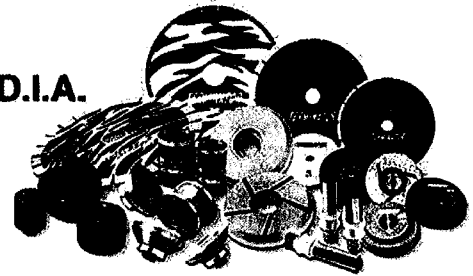
PRODUCTS

WHERE TO BUY

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**CONTINENTAL** D.I.A.  
DIAMOND PRODUCTS, INC.

*...Engineering Innovation*



## CUTTING – Bridge Saw Blades

TERMINATOR ZOOM 25 MM SILENT CORE BRIDGE SAW BLADES



## EXHIBIT I



## LICENSE AGREEMENT

This Agreement is entered into this 9 day of APRIL, 2004 by and between CONTINENTAL D.I.A. DIAMOND PRODUCTS, INC., (hereinafter referred to as CONTINENTAL D.I.A.) having its principal place of business at 1300 Industrial Road, Suite #18, San Carlos, CA 94070-4130, U.S.A. and Dong Young Diamond Industrial Co., LTD., (hereinafter referred to as DONG YOUNG) 761-4 Dohwa-dong, Nam-gu, Incheon, KOREA, and all of its subsidiaries.

WHEREAS, CONTINENTAL D.I.A. markets its proprietary line of diamond-containing products (hereinafter referred to as Products), namely; core drills, saw blades, grinding cup wheels, resin polishing pads, profile tooling and other tools for working stone, marble, granite or concrete; some of these Products bear the registered trademark "TERMINATOR", trade names, and logographics and/or symbols (Licensed Marks) that have come to be associated with CONTINENTAL D.I.A.

WHEREAS, CONTINENTAL D.I.A. has developed certain proprietary information (Proprietary Information) relating to the design, modification, composition, specifications and method of manufacture and marking of the Products;

WHEREAS CONTINENTAL D.I.A. is willing to give DONG YOUNG DIAMOND a royalty-free license to use the Proprietary Information and the "TERMINATOR" trademark and other Licensed Marks as necessary for DONG YOUNG to produce Products for CONTINENTAL D.I.A.; and

WHEREAS, DONG YOUNG desires to make the Products that are identified on Dong Young's letterhead in Exhibit A (attached) by product item code and description (Licensed Products) specifically for CONTINENTAL D.I.A., according to the specifications set forth in the Proprietary Information;

NOW THEREFORE, the parties agree as follows:

### I. Grant of License

(1) Subject to the terms and conditions of this Agreement, CONTINENTAL D.I.A. hereby grants to DONG YOUNG a royalty-free nonexclusive license to use the Proprietary Information to produce the Licensed Products for sale to CONTINENTAL D.I.A.

(2) Subject to the terms and conditions of this Agreement, CONTINENTAL D.I.A. hereby grants to DONG YOUNG a royalty-free nonexclusive license to apply the "TERMINATOR" trademark and other Licensed Marks to the Licensed Products for sale to CONTINENTAL D.I.A.

(3) DONG YOUNG agrees to sell the Licensed Products identified in Exhibit A only to CONTINENTAL D.I.A.

(4) DONG YOUNG shall have no right to sublicense to others the use of the "TERMINATOR" trademark and other Licensed Marks or the Proprietary Information.

### II. Proprietary Information

(1) CONTINENTAL D.I.A. shall make available to DONG YOUNG, from time to time, certain Proprietary Information relating to the design, modification, composition, specifications and method of manufacture and marking of the Licensed Products. DONG YOUNG agrees to maintain such Proprietary Information

in confidence, and to use it only for manufacture of Products to be made for CONTINENTAL D.I.A. and for no other purpose. DONG YOUNG understands and agrees that Proprietary Information received from or developed in conjunction with CONTINENTAL D.I.A. may not be divulged to third parties or used to manufacture products for third parties.

(2) The obligations of this Section II do not apply to any information which (a) was in DONG YOUNG's possession prior to the first receipt of same from CONTINENTAL D.I.A. (b) now, or hereafter becomes through no act or failure to act on DONG YOUNG's part, generally known to the stone-working tool trade on a non-confidential basis, or (c) is disclosed to DONG YOUNG by others without restriction on further disclosure.

### III. Product Quality and Approvals

(1) CONTINENTAL D.I.A. shall establish in advance the specifications and quality of the individual Licensed Products to be produced by DONG YOUNG. On each shipment of Licensed Products to CONTINENTAL D.I.A., CONTINENTAL D.I.A. reserves the right to inspect the quality of the Licensed Products, and to reject the shipment if the specifications are not met.

(2) The "TERMINATOR" trademark and other Licensed Marks may be applied by DONG YOUNG only to Licensed Products that are manufactured in accordance with this Agreement and shipped to CONTINENTAL D.I.A.

(3) For new, improved or modified Licensed Products, DONG YOUNG agrees to produce prototypes for CONTINENTAL D.I.A.'s testing, and to produce the new, improved or modified Licensed Products for CONTINENTAL D.I.A. only after final approval by Mr. Vincent Salemi, President of CONTINENTAL D.I.A. Mr. Vincent Salemi must approve any changes in the type, composition, specifications or quality of a Licensed Product before DONG YOUNG can manufacture Licensed Products incorporating that change.

### IV. Indemnity

(1) DONG YOUNG hereby agrees to indemnify, defend, and hold CONTINENTAL D.I.A. harmless from any and all claims, liabilities, judgments, costs, and expenses, including court costs and attorney's fees, arising out of any action by DONG YOUNG under this Agreement.

(2) In event that there is a determination in a court of competent jurisdiction of unauthorized sales of Licensed Products or unauthorized use of Proprietary Information or the TERMINATOR or other Licensed Marks by DONG YOUNG, Continental D.I.A. shall be entitled to an award of costs and attorneys' fees in addition to damages.

(3) DONG YOUNG shall obtain and maintain product liability insurance providing protection for CONTINENTAL D.I.A. in amounts of coverage specified below, against any claims, liabilities, judgments, costs, and expenses, including court costs and attorney's fees, arising out of any alleged defects in Dong Young's products, or any use thereof. CONTINENTAL D.I.A. shall be named as an additional insured in said policy of insurance, which shall provide that it may not be canceled without at least thirty (30) days written notice to CONTINENTAL D.I.A., and CONTINENTAL D.I.A. shall be furnished with a certificate of such insurance. Dong Young agrees that such insurance policy or policies shall provide coverage of one million dollars (\$1,000,000) for personal injuries arising out of each occurrence and three hundred thousand dollars (\$300,000) for property damage arising out of each occurrence.

## V. Notices

A notice given by a party under this Agreement shall be deemed to be given ten calendar days after the postmark date, provided that such is mailed Certified or Registered mail, Return Receipt Requested, and the postage is prepaid First Class to the party at the address listed above, or to such other party or address as the party may have furnished in writing to the other for that purpose; otherwise notice shall be deemed given when received.

## VI. Term and Termination of Agreement

(1) The term of this Agreement shall be for five (5) years from the date of the Agreement, and the Agreement shall be renewed automatically for an additional five year term provided that both parties continue to work together and all terms of this agreement are complied with, and unless either party gives the other at least ninety (90) day's prior written notice of any change in term duration or in termination.

(2) This Agreement shall automatically terminate if DONG YOUNG becomes insolvent, makes an assignment for the benefit of any creditor, or becomes the subject of any bankruptcy or receivership proceedings.

(3) This Agreement shall terminate if either party fails to remedy a default under this Agreement within 30 days after receiving written notice from the other party detailing the default, or both parties mutually agree to extend the term to remedy the default.

(4) If the Agreement expires or is terminated, all rights granted to Dong Young herein shall cease. Dong Young understands and agrees to be bound not to divulge to third parties or manufacture products for third parties with Proprietary Information received from CONTINENTAL D.I.A.

(5) No termination of this Agreement or the License shall relieve either party of its obligations with respect to protection of Proprietary Information as provided in Section II.

## VII. Integration

This Agreement constitutes the entire agreement between the parties, and no modifications or revisions hereof shall be in force or effect unless the same are in writing and executed by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California, U.S.A.

IN WITNESS WHEREOF, the parties executed this Agreement on the date mentioned above.

Licensee: DONG YOUNG INDUSTRIAL CO., LTD.

Licensor: CONTINENTAL D.I.A.  
DIAMOND PRODUCTS, INC.

By: [Signature]

By: [Signature]

Name: Lee Dong Soo

Name: Vincent Salemi

Title: PRESIDENT

Title: President

Date: APRIL 9, 2004

Date: April 9, 2004

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

## I. (a) PLAINTIFFS

Continental D.I.A. Diamond Products, Inc.

## DEFENDANTS

Dong Young Diamond Industrial Co., Ltd., et al.

E-filing

(b) County of Residence of First Listed Plaintiff San Mateo  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jeffrey M. Ratnoff (SBN 197241)/Michael K. Bosworth (SBN 75887)  
BUCHANAN INGERSOLL & ROONEY LLP  
333 Twin Dolphin Drive, Suite 700  
Redwood Shores, CA 94065; Tel: (866) 461-4586; Fax: (650) 622-2499

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

761-4 Dowha-Dong, Nam-GU, Incheon. KOREA 402-060

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   | PTF                        | DEF                                   |   | PTF                                   | DEF                        |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>SOCIAL SECURITY</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC § 1051 et seq.

Brief description of cause:

Trademark Infringement and Unfair Competition

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

## IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE  
April 24, 2008

SIGNATURE OF ATTORNEY OF RECORD

Jeffrey M. Ratnoff

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> Continental D.I.A. Diamond Products, Inc.	<b>DEFENDANTS</b> Dong Young Diamond Industrial Co., Ltd., et al.
<b>(b)</b> County of Residence of First Listed Plaintiff San Mateo (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
<b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number)  Jeffrey M. Ratnoff (SBN 197241)/Michael K. Bosworth (SBN 75887) BUCHANAN INGERSOLL & ROONEY LLP 333 Twin Dolphin Drive, Suite 700 Redwood Shores, CA 94065; Tel: (866) 461-4586; Fax: (650) 622-2499	Attorneys (If Known)  761-4 Dowha-Dong, Nam-GU, Incheon. KOREA 402-060

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																		
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	(For Diversity Cases Only) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">Citizen of Another State</td> <td style="width:33%;">Citizen or Subject of a Foreign Country</td> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 3</td> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 3 Foreign Nation</td> </tr> </table> <table style="width:100%;"> <tr> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:33%;">Incorporated and Principal Place of Business In Another State</td> <td style="width:33%;">Foreign Nation</td> </tr> <tr> <td><input checked="" type="checkbox"/> 4</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 6</td> </tr> <tr> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	Citizen of Another State	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 3 Foreign Nation	Incorporated or Principal Place of Business In This State	Incorporated and Principal Place of Business In Another State	Foreign Nation	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6
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<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6																	
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IV. NATURE OF SUIT (Place an "X" in One Box Only)							
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<b>V. ORIGIN</b> (Place an "X" in One Box Only)	Transferred from Appeal to District
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment	

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC § 1051 et seq. Brief description of cause: Trademark Infringement and Unfair Competition
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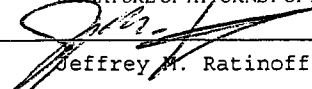
<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".
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<b>IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)</b>	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE
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DATE  
April 24, 2008

SIGNATURE OF ATTORNEY OF RECORD

  
Jeffrey M. Ratnoff